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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 30636 7590 12/14/2011 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038 | | | | |
| EXAMINER SORKIN, DAVID L. | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1774 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,035

Applicant(s)

MAY, LUTZ

Examiner

DAVID SORKIN

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-12, 14, 15, 17, 18, 20, 21 and 25-44 is/are pending in the application.
- 5a) Of the above claim(s) 40-44 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-12, 14, 15, 17, 18, 20, 21 and 25-39 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. This application contains claims 40-44 drawn to an invention nonelected with traverse in the reply filed on 20 June 2011. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12, 14, 15, 17, 18, 20, 21 and 25-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Hume (US 4,854,721). Regarding claim 1, 5, 6, 17, 18, 20, 21, 26-32, 37 and 38, Hume discloses an array comprising a reciprocating object (24); and a position sensor device for determining a position of the reciprocating object, wherein the position sensor device includes at least one magnetically encoded region (26) fixed on a reciprocating object; a least one magnetic field detector (58, 60); a position determining unit (see Fig. 22). One magnetic region, rather than a plurality, is disclosed. However, see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts. Similarly, only two detectors are

disclosed, but further duplicating detectors would have also been obvious. Regarding claim 2, the at least one magnetically encoded region is a permanent magnetic region (see col. 6, line 20). Regarding claim 3, the region is longitudinally magnetized (see Fig. 1). Regarding claim 4, the region is circumferentially magnetized (see Fig. 1). Regarding claims 7-12, "The patentability of a product does not depend on its method of production." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Regarding claim 14, the region is a magnetic element (26) attached to the surface of the reciprocating object. Regarding claim 15, the magnetic field detector comprises a Hall-effect probe (see col. 6, line 22). Regarding claims 24 and 25, plural detectors (58, 60) are disclosed. Regarding claim 33, the reciprocating object is not a required element of the claimed structure. Regarding claim 35, the reciprocating object is a shaft (24). Regarding claim 36, the magnetically encoded region is provided along the length of the reciprocating object (see Fig. 1). Given that at least one of the three recited reciprocating objects is not a required element of the claimed structure, it is considered that claims 37 and 38 are anticipated. Regarding claim 39, a control unit is disclosed (See Fig. 22).

Response to Arguments

4. Applicant argues that Hume does not disclose the step of detecting a sequence of magnetic signals. However, the elected claims are not method claims. Applicant has not structurally distinguish the claimed device over the prior art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID SORKIN whose telephone number is (571)272-1148. The examiner can normally be reached on Mon.-Fri. 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter D. Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1774